IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 16258 of 2006(I)

AGAINST THE ORDER DATED 06/06/2006 IN IN ARC 1538/2001 IN EP.361/2004 of MUNSIFF COURT, TIRUR

.....

PETITIONER:

---

1. JANARDHANAN,
   AMBATT PUTHILLATH,
   KANUR, TIRUR.

2. VELAYUDAN,
   PONNATH, KANUR, TIRUR.

3. ABDU REHIMAN,
   THEKKEMANNATH, KANUR, TIRUR.

BY ADV. SRI.A.KRISHNAN

RESPONDENTS:

THE VETTOM SERVICE CO-OPERATIVE
BANK LTD., REP. BY ITS SECRETARY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.16258/06

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE EXECUTION PETITION

EXT.P2. COPY OF THE ORDER IN EXT.P NO.361/04 IN ARC NO. 1538/01-02 THE MUNSIFF COURT, TIRUR.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 16258 OF 2006

Dated this the 29th day of June, 2007

JUDGMENT

There is no appearance for the respondent-decree holder who has been served with notice. Impugned in this Writ Petition under Article 227 filed by the judgment debtor is Ext.P2 order of the execution court by which that court has found that the petitioner-judgment debtor is having sufficient means has willfully neglected to pay and on that basis ordered warrant for his arrest and detention.

2. Submissions of Mr.A.Krishnan, counsel for the petitioner notwithstanding, I am not persuaded to hold that the impugned order is vitiated to such an extent as to warrant correction under the supervisory jurisdiction. The learned Munsiff had the evidence consisting of oral testimony-PW1 decree holder and also Ext.A1 copy of the registered sale deed in favour of the petitioner to support the above finding. The respondent had not adduced any counter evidence.

Under these circumstances Ext.P2 cannot be said to be faulty. At the time when this Writ Petition came up for admission, this court granted stay on condition that the petitioner should deposit an amount of Rs.3,000/- before the court below within two months from 23.06.06. The submission of Mr.Krishnan that the above condition has been complied

with by the petitioner, is not resisted by anybody. Even as I refuse to interfere with Ext.P2, I am inclined to dispose of the Writ Petition directing that the order of stay will continue further on condition that the petitioner pays on the first of every month commencing from 1st of August 2007 at the rate of Rs.2,000/- till such time as he discharges the entire decree debt. Once it is seen that the entire debt is wiped off, it is open to the petitioner to file an application for recording full satisfaction. The court below will hear both sides and take a decision, if such application is filed. In the event of any two defaults in the matter of remitting the installments, the petitioner will forfeit the benefits of this judgment.

PIUS C. KURIAKOSE, JUDGE

btt